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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: MAR 2 9 2012 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as a physician scientist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits his third personal statement and a research proposal. The record contains only minimal evidence to support the petitioner's own self-serving discussions of his accomplishments, namely: the petitioner's professional credentials, a single article with a single citation, a single conference presentation, an unpublished manuscript and a single letter from his supervisor. Thus, the AAO concurs with the director that the petitioner has not established the necessary track record to warrant a waiver of the alien employment certification process in the national interest.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not contest that the petitioner, a physician, is an advanced degree professional. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors that U.S. Citizenship and Immigration Services (USCIS) must consider when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The AAO uses the term "prospective" to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The AAO concurs with the director that the petitioner works in an area of intrinsic merit, electrophysiology, and that the proposed benefits of his work, improved treatment for neurological diseases, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

On appeal, the petitioner states:

> It is illogical to speculate that someone with no experience or skills working in the same field with minimum qualification, even if available through a labor certification process, will be in the future benefit [*sic*] to the field as a whole to a greater extent than someone how [*sic*] has already investigated the disease process for many years making the certification process in this case unreasonable and time consuming.

The modifier "minimum" does not nullify the word "qualifications" or suggest an unskilled worker. In other words, an available U.S. worker with the requisite "minimum qualifications" for the job is one who, by definition, is qualified for the job. The "minimum qualifications" for a given job may, in fact, be quite stringent. While USCIS recognizes the advantage to an employer of retaining qualified staff rather than training inexperienced, newly hired workers, the contention that no other experienced workers are available should be tested on an application for alien employment certification. *Id.* at 222.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, USCIS generally does not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

Initially, the petitioner submitted a lengthy statement discussing his research accomplishments and laboratory skills. For example, he asserted (1) that he produced results using the patch clamp technique (to be published in 2010), (2) that he is the only member of his team who can perform the "dual patching" and culture of brain cell techniques, (3) that he subcloned certain vectors and (4) that he quantified the amount of a specific protein in various tissues (presented at a conference). He also lists several laboratory techniques with which he has gained experience.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). Moreover, it cannot suffice to state that the petitioner possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. at 221.

Finally, job-related training in an important new method cannot be considered to be an achievement or contribution comparable to the innovation of that new method. *Id.* at 221, n.7. The petitioner did

assert that he has "developed a new highly efficient and easy means for culturing astrocytes and maintaining these cells for an extended time to study connexin proteins expression." Nevertheless, even original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

In support of his self-serving statement and self-serving curriculum vitae, the petitioner initially submitted evidence of his membership in the American Epilepsy Society, an article on the mechanisms of convulsions in eclampsia in *Medical Hypotheses* and a poster presented at the Gordon Research Conference in Ventura, California. The article in *Medical Hypotheses* reports the petitioner's personal theory rather than the results of original research and the petitioner did not submit evidence that *Medical Hypotheses* is a peer-reviewed medical journal.

In response to the director's request for additional evidence, the petitioner submitted another personal statement. As stated above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California,* I&N Dec. at 190). The petitioner also submitted evidence that one article had cited his article in *Medical Hypotheses*, two requests for copies of the petitioner's article and an unpublished manuscript he coauthored with [redacted] Requests for copies of an article demonstrate an interest in the petitioner's work rather than ultimate application of his work. Thus, they carry less weight than citations. A single citation is not evidence of the petitioner's influence in the field as a whole.

As stated above, on appeal the petitioner submits a research proposal listing what part the petitioner will play in future research. This proposal does not demonstrate how the petitioner has already influenced the field to any degree. Rather, it addresses prospective research.

The final piece of evidence in the record is a letter from [redacted], a professor at the University of Pennsylvania. [redacted] confirms that, as of October 2006, the petitioner has been working in Dr. Scherer's laboratory as a postdoctoral researcher investigating how astrocytes and oligodendrocytes are coupled by brain activities. [redacted] explains that neurological diseases can damage these cells that are essential for normal brain function. [redacted] continues:

> By understanding how gap junctions work in these cells, we hope to provide a treatment for these diseases. To do so, [the petitioner] has been examining these cells with complex electrophysiological methods called whole cell patch clamp and dual patch clam studies; this requires advanced education and expertise to perform.

[redacted] discusses the complexity and importance of these techniques, noting that the inventors of the patch clamp technique received the Nobel Prize for this work. As stated above, job-related training in an important new method cannot be considered to be an achievement or contribution comparable to the innovation of that new method. *NYSDOT,* 22 I&N Dec. at 221, n.7. [redacted]hen lists

several other laboratory skills, which appear amenable to enumeration on an application for alien employment certification.

Finally, [redacted] asserts that the petitioner "built a new electrophysiology rig, performed medical research experiments using these techniques, and has written manuscripts describing his results." [redacted] characterizes the petitioner's demonstration that oligodendrocytes are coupled to each other as "very important." [redacted] does not suggest that the University of Pennsylvania is considering patenting the petitioner's rig. Even if the university is pursuing a patent, the petitioner cannot secure a national interest waiver simply by demonstrating that he or she holds a patent or pending patent. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7. [redacted] does not suggest that any independent laboratory has expressed an interest in licensing or otherwise using the petitioner's rig. [redacted] does not explain how the petitioner's manuscripts, only one of which has been published, have influenced the field beyond the University of Pennsylvania. [redacted] also fails to explain how the petitioner's work on coupling has influenced any laboratory beyond the University of Pennsylvania.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letter considered above primarily contains bare assertions of the importance of the petitioner's work without providing specific examples of how those innovations have influenced the field. Merely repeating the legal standards does not satisfy the petitioner's burden of proof.[1] The petitioner

[1] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept

did not submit any letters from independent researchers who can affirm the petitioner's influence on their own work. The petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition.

Ultimately, as of the date of filing, the petitioner had published a single article expressing a theory rather than reporting his research results. That article had garnered only a single citation as of the date of filing. The petitioner's area of research is no doubt of value and the petitioner possesses certain laboratory skills that are useful to his employer. It can be argued, however, that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any research, in order to be accepted for publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research pursuant to a research grant serves the national interest to an extent that justifies a waiver of the job offer requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.

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primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).